# APPENDIX

Filed October 1, 1963

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20,925

GREAT LAKES CARBON CORPORATION, *Plaintiff-Appellant*

v.

CONTINENTAL OIL COMPANY, LAKE CHARLES CHEMICAL CORPORATION and UNION CARBIDE CORPORATION, *Defendants-Appelees*

On Appeal from C.A. No. 6946 in the U. S. District Court for the Western District of Louisiana, Lake Charles Division.

**Motion Under Rule 21 of This Court and Under Rule 75 (j) F.R.C.P. for an Intermediate Order Granting Counsel for Appellant the Right to Inspect Certain Documents Now Under Seal and Identified as "Plaintiff's Exhibit No. 208"**

Comes now the Plaintiff-Appellant in the above entitled cause and moves for an Intermediate Order granting counsel for Plaintiff-Appellant the right to inspect and make copies of the documents now on file under seal in this Court and identified as Plaintiff's Exhibit No. 208. These documents are also identified as Item No. 121 in the list attached to the District Court Clerk's Certificate sent to this Court on September 24, 1963.

In Appellant's statement of the points on which it intends to rely on the appeal; Item Number 6 includes the following:

> "With respect to the action generally, The Trial Court erred:
>
> "(a) In denying Plaintiff access to certain of Defendants' documents transmitted to the Court of Appeals under seal and identified as Plaintiff's Exhibit No. 208.

"(b) In holding that certain documents which form part of PX-208 are privileged.

"(c) In not permitting Plaintiff access to certain of the documents in PX-208, even if they are privileged."

The Order of the District Court of June 20, 1963 recites the history of the proceedings with respect to the aforesaid documents and is as follows:

"ORDER

"Certain documents from the files of Roy C. Hackley, Jr., patent counsel for defendant Continental Oil Company, were specifically sought by plaintiff by means of a Rule 34 motion filed prior to trial. Defendant Continental Oil Company asserted that the documents sought were privileged and thus not subject to production.

"The Court heard oral argument of the parties on the motion, received written briefs from the parties, and reviewed the documents themselves which had been submitted to the Court for such purpose with the consent of defendant Continental Oil Company.

"This Court then held certain ones of the documents to be privileged, indeed some of them extremely so (the Court's letter to counsel dated July 2, 1959), and thus not subject to discovery by plaintiff. Those documents were then sealed and retained by defendants' attorneys pursuant to Court order.

"Later plaintiff was also required to hold and preserve certain of its documents which were held to be privileged (see Order dated April 17, 1962).

"These documents shall be filed forthwith with the Clerk of this Court in a sealed envelop or other sealed container suitably marked or otherwise identified so that they can be incorporated in the appeal record of this cause.

"THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, on this the 20th day of June, 1963.

"(Signed) Edwin F. Hunter, Jr.
United States District Judge".

Access to these documents preliminary to a consideration of this appeal on the merits is necessary because a later ruling of this Court reversing the District Court's order denying access to the documents would not afford appellant an opportunity of presenting its views with respect thereto without needless delay and procedural complications. The documents are without question material to the issues before the Court. If the veil of alleged privilege is swept aside they will constitute evidence with respect to the trade secrets issue as well as the issues of infringement and validity of Plaintiff's patent. That they are cogent evidence is shown by the District Court's observation at a hearing:

> "The Court: Some of them it would have been better if I hadn't seen, but I don't know what you can do about it."
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> —Page 7 of Transcript of Hearing on Motions April 14th, 1962.

The facts pertinent to this Motion are reflected in the portion of the District Court's Opinion here quoted:

> "Despite the fact that pressure tar had been coked by Kendall and Gulf for many years to produce premium coke, no one knew for sure that the making of needle coke was that simple. The prevailing thought was that there was something inherent in the crude oil at Kendall and Gulf that resulted in the production of the premium coke. In 1951, at plaintiff's behest, Pan-Am Southern agreed to a cooperative experimental project with plaintiff for the purpose of determining whether premium coke could be made by coking thermal tar in large quantities. The experiments revealed that large quantities could be so produced—and they were so produced and sold to plaintiff. But, in April of 1953, Pan-Am decided it did not desire to continue with this production. Continental heard of this and became interested. After obtaining permission to do so from plaintiff in April of 1953, Pan-Am permitted Continental to view and study the operation. Then, by the end of 1953, the process was put upon a commercial basis by Continental with an agreement

that all of the coke so produced from Continental's Ponca City, Oklahoma plant would be sold to plaintiff. From 1953 to date large quantities of premium coke have been made by Continental from pressure tar at its Ponca City refinery and delivered to plaintiff. On June 17, 1953, Union Carbide made inquiry of Continental about buying some of this Ponca City coke. On July 20, 1953, Continental informed Union Carbide that this coke had been 'contracted for five years.' Negotiations ensued between Continental and Union Carbide with respect to the building of a coking plant at Continental's refinery at Lake Charles. The Lake Charles plant was to produce premium coke to be sold to Union Carbide. During their negotiations, Continental—wholly unknown to plaintiff—shipped some of the Ponca City premium coke to Union Carbide so that Union Carbide could conduct field and other tests on the same to determine whether it was suitable for making graphite electrodes. In January of 1956, Continental and Union Carbide entered into a firm agreement pursuant to which Continental agreed to manufacture premium coke at Lake Charles and sell it all to Union Carbide. To effectuate this agreement, Continental Oil Company, during 1956 and 1957, proceeded to design and build this coking plant at Lake Charles. In 1958 Continental began manufacturing premium coke there and selling it to Union Carbide. The process at Ponca City and Lake Charles are the same, except that at Ponca City 100% pressure tar is used, whereas in Lake Charles a blend is used.

"In 1954 and 1955 there was very close cooperation between Continental and Union Carbide, and several carloads of premium coke were shipped and sent to Union Carbide from the Ponca City plant. Samples of the thermal tar were also sent. The purpose was to enable Union Carbide to find out whether this coke was suitable for their purposes. In July of 1957 Continental made a special run of about 400 tons of premium coke at Ponca City, using a feed stock of less than 100% thermal tar. This special run was not revealed to Great Lakes. From this run, about 100 tons of premium coke were sent, free of charge, to Union Carbide, so that a determination could be made as to whether it was suitable for use in making graphite electrodes. It can hardly be doubted that these in-

stances of shipping coke to Union Carbide constituted a breach of its contract with Great Lakes. But this is *not* a suit for breach of contract. The tort complained of here is the alleged conspiracy beginning in 1953 which allegedly destroyed plaintiff's rights in certain trade secrets. The remedy sought *in effect* would be an injunction removing Union Carbide as a competitor in the graphite electrode field."

—Quoting pages 61-63 of
Opinion of June 20, 1963.

As stated in the District Court's Order previously quoted, the documents in question are from the files of Roy C. Hackley, Jr.

Plaintiff's Exhibit 67 contains portions of two depositions of Roy C. Hackley, Jr. Three extra copies of this Exhibit 67 are filed herewith. This exhibit shows that in October, 1956, Hackley moved to Ponca City, Oklahoma, and went to work there as a regular full-time employee of Continental Oil Company. Although a lawyer elsewhere, he is not a member of the Bar of the State of Oklahoma, and has not applied for membership in Oklahoma (pages 2-4). The acts, as to which the aforesaid documents relate, took place in Ponca City, Oklahoma.

Plaintiff's Exhibit 67 also shows (pages 6 and 61) that Hackley was the inventor of the accused process used by Continental Oil Company at Lake Charles, Louisiana.

Plaintiff's Exhibit 67 also shows (page 57) that, prior to the Hackley invention in 1957, Continental had intended to use the Ponca City process at Lake Charles, where it did not have a license. Further, it shows (pages 54-57) that Hackley was fully advised by April, 1957, of what Continental had intended to do at Lake Charles, although in his first deposition he denied this fact (pages 5 and 13).

Thus, the documents filed in this Court under seal, and identified as Plaintiff's Exhibit No. 208, are from the file of one who was the mastermind in the project of devising the accused process.

As shown, the District Court found (Opinion, Page 63) that, in July of 1957, 100 tons of premium coke was sent by Continental, free of charge, to Union Carbide, and that "it can hardly be doubted that these instances of shipping coke to Union Carbide constituted a breach of its contract with Great Lakes."

Plaintiff's Exhibit 67 shows (pages 28-31) that Hackley was the principal actor in this breach of contract; and that before breaching the contract Hackley had knowledge of it (page 67), although he denied (pages 29-31) that he had investigated the question of whether the sending of the coke to Union Carbide would be a breach. Appellant believes that the documents of Plaintiff's Exhibit 208 shed light on the question of what part this breach of contract played in concealing the alleged conspiracy between Continental and Union Carbide to pirate the invention which was the property of Great Lakes.

Counsel for Appellant should have the right to inspect the documents, first to be able to discuss intelligently the question of whether or not the District Court was correct in ruling that the documents were privileged, and, even if they are privileged, whether the seal of secrecy should be broken, as in *Seismograph Service Co.* v. *Offshore Raydist,* 135 F. Supp. 342, affirmed 263 F. 2d 5 (CA-5). Secondly, if this Court rules that the documents, or any of them, constitute admissible evidence, they should be made available to counsel so that the views of Appellant with respect thereto can be properly presented to this Court in the brief on the merits of this appeal.

Appellant contends that the use of Hackley's invention by Continental Oil Company at Lake Charles was an obvious imitation, and "his skill was directed toward contriving a [process] which appeard to be, but was not in fact different" than the process of the patent in suit, exactly as held in *Bryan* v. *Sid W. Richardson, Inc.,* 254 F. 2d 191, 197-198 (CA-5).

In any event, no privilege attaches to the documents in Plaintiff's Exhibit No. 208, because Hackley's acts were purely of a business nature and not acts in his professional capacity as an attorney. Making an invention, obtaining a patent on it, directing research, and breaching a contract are not the acts of a lawyer.

In *Pollock* v. *United States,* 202 F. (2d) 281, 286, this Court stated:

> "* * * The privilege accorded to communications between attorney and client does not apply except where the attorney acts in his professional capacity. * * *"

Moreover, the situation here on privilege is parallel to that in *Seismograph Service Corp.* v. *Offshore Raydist,* 135 F. Supp. 342, affirmed 263 F. 2d 5 (CA-5).

As stated in Footnote 4 (135 F. Supp. 349), in the *Seismograph Case* Judge Wright ordered that the correspondence between Seismograph and its patent counsel be produced because counsel had participated in the alleged tort. Seismograph contended that the correspondence was privileged, but it was ordered produced.

The Order of Judge Wright on this question is not reported, but his "Reasons" are here quoted. Even though the correspondence was privileged, it was ordered to be produced.

> "REASONS: The theory of the defendant's case is that the plaintiff has committed a fraud on its rights in connection with the patents in suit. While this information elicited by discovery so far in this case does not, by any means establish the charge as a fact, sufficient information has been disclosed to break the seal of secrecy respecting the privilege and to let the light in. Clark v. United States, 289 U.S. 1; ALI, Model Code of Evidence, Rule 212."
>
> —Quoting from the Order of Judge Wright in Seismograph Service Co. v. Offshore Raydist, C.A. 3686.

The decision of Judge Wright on the merits in the *Seismograph Case*, and the decision of this Court on the appeal, are based largely on the evidence found in the allegedly privileged documents produced by Mr. Mason, Seismograph's patent counsel.

Similarly, here, no attorney-client privilege exists which justifies withholding the documents which Appellant seeks to inspect. Hackley was acting (in Oklahoma where he was not even licensed to practice law) in a business capacity, not as a lawyer. Even though the Court should affirm the District Court and hold that the privilege does exist, sufficient showing has been made to drive the privilege away. The seal on the documents in Plaintiff's Exhibit 208 should be broken, so that counsel for Appellant can intelligently discuss them in its brief.

WHEREFORE, Appellant prays that after due consideration counsel for Appellant be granted the right to inspect and make copies of the documents identified as Plaintiff's Exhibit No. 208 for their further use in presenting Appellant's case to this Court on the merits.

In the alternative, Appellant prays that the Court order a hearing to be held on the subject of the within motion in advance of the submission of this case on the merits, and that pursuant to said hearing the Court enter the said order prayed for next hereinabove.

Respectfully submitted,

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No. 20,925

**On Motion Under Rule 21 of This Court and Under Rule 75 (j) F.R.C.P. for an Intermediate Order Granting Counsel for Appellant the Right to Inspect Certain Documents Now Under Seal and Identified as "Plaintiff's Exhibit No. 208"**

Before RIVES, and WISDOM, *Circuit Judges.*

The Court is of the opinion that the decision of this motion is a matter of such importance as to require a hearing in advance of the submission of this case on its merits. It is accordingly ORDERED that a hearing on this motion be set in due course, and not necessarily before the present panel of Judges.

Enter, this the 23rd day of October, 1963.

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## ARGUMENT AND SUBMISSION

**Extract from the Minutes of January 7, 1964**

No. 20925

GREAT LAKES CARBON CORPORATION

versus

CONTINENTAL OIL COMPANY, ET AL

On this day this cause was called, and after argument by S. W. Plauche, Jr., Esq., for appellant, and Richard Russell Wolfe, Esq., for appellees, was submitted to the Court.

No. 20925

(June 9, 1964)

Before CAMERON* and GEWIN, *Circuit Judges* and AINSWORTH, *District Judge.*

AINSWORTH, District Judge: The issue here is whether appellant may inspect certain documents filed herein under seal, which the District Court held were privileged, and which appellant contends are necessary for presentation of its appeal on the merits.

Great Lakes Carbon Corporation, appellant, filed its motion here under Rule 21 of this Court[1] and under Rule 75(j),[2] Federal Rules of Civil Procedure, for an inter-

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* Judge Cameron, the third judge constituting the Court which originally heard this case, died prior to the filing of this opinion. He participated both in the hearing and the decision of this cause, however. The present opinion is rendered by a quorum of the Court, pursuant to Title 28, U.S.C.A., § 46, Judge Cameron having taken no part in the final draft of the opinion of this case.

[1] Rule 21, Motions

1. All motions to the court shall be reduced to writing and served on opposing counsel and shall contain a brief statement of the facts and objects of the motion. Preliminary or procedural motions and petitions need not be printed, but may be filed in four legible typed copies.

2. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

[2] Rule 75(j), Federal Rules of Civil Procedure

Record for preliminary hearing in appellate court.

If, prior to the time the complete record on appeal is settled and certified as herein provided, a party desires to docket the appeal in order to make in the appellate court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, or for any intermediate order, the clerk of the district court at his request shall certify and transmit to the appellate court a copy of such portion of the record or proceedings below as is needed for that purpose.

mediate order granting its counsel the right to inspect certain documents now under seal. Appellant has already appealed from the decision on the merits of the United States District Court dismissing a suit for patent infringement and unfair trade practices.[3] The subject matter of that suit is a process for making a special coke for graphite electrodes used in the steel mills. The matter now before this Court does not relate to the merits of the case. By a motion filed in this Court on or about October 2, 1963, appellant seeks the right to inspect certain documents filed in this Court under seal, which the lower court held were privileged and therefore not subject to discovery. By order of this Court of October 23, 1963, appellant's motion was set for hearing in advance of the submission of the case on the merits.

The documents which appellant seeks to inspect are from the files of Roy C. Hackley, Jr., an attorney employed by appellee Continental Oil Company. Appellant sought to inspect these documents by means of a Rule 34 motion filed prior to the trial, but appellees asserted that the documents sought were privileged and, therefore, not subject to inspection. The lower court heard oral argument by the parties on the motion, received written briefs from the parties, and reviewed the documents themselves, which had been submitted to the court for such purpose with the consent of the appellees. After this extensive study, the lower court held some of the documents to be privileged and not subject to discovery by appellant.

The process used by appellee at Lake Charles, Louisiana, which is alleged to infringe appellant's Patent No. 2,775,549 to Shea, is an alleged improvement claimed to have been made by Roy C. Hackley, Jr., patented by him as Patent No. 2,922,755 and assigned to Continental Oil Company. Appellant claims that the documents are relevant to the

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[3] 219 F. Supp. 468.

Hackley patent and to the charge of infringement of the Shea patent, and to the charge of unfair competition. Furthermore, appellant claims it is handicapped in the presentation of its case on this appeal by the fact that it has not had access to the documents. Appellant contends that because it has sufficiently shown that Hackley played a great part in the alleged torts, the veil of the attorney-client privilege as to his records has been pierced.

We do not think the question presented here can properly be decided by an intermediate order prior to consideration of the merits of the case. When the district judge passed on the propriety of requiring production of the documents under Rule 34, Federal Rules of Civil Procedure, he was able to do so because he had sufficient information to intelligently decide the issue of relevance, materiality, and, most important, of privilege. We are not in an equal position now to make such a judgment.

Accordingly, we do not believe a piecemeal appeal should be allowed under these circumstances. We are unable to pass upon the lower court's ruling that these documents be sealed and not available to appellant because they are privileged attorney-client writings. The dismissal of this suit by the court below, after trial on the merits, was not based in any way on the sealed documents. It is necessary, therefore, that this Court have a greater knowledge of all the facts involved before passing on the issue of whether these documents are privileged. When this appeal is heard on the merits of the case, we will have before us all of the material, facts and evidence necessary to decide the relevance, materiality and admissibility of the documents sought.

The motion for an intermediate order is denied.

## ARGUMENT AND SUBMISSION

**Extract from the Minutes of January 4, 1965**

No. 20925

GREAT LAKES CARBON CORPORATION

versus

CONTINENTAL OIL COMPANY, ET AL

On this day this cause was called, and after argument by Earl Babcock, Esq., for appellant, and Richard Russell Wolfe, Esq., for appellees, was submitted to the Court.

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No. 20925

(May 17, 1965.)

Before MARIS,* RIVES and BROWN, *Circuit Judges.*

PER CURIAM: This is an appeal by the plaintiff Great Lakes Carbon Corporation from a judgment of the District Court for the Western District of Louisiana dismissing its complaint against the defendants Continental Oil Company, Lake Charles Chemical Corporation and Union Carbide Corporation for patent infringement and for violation of trade secrets and unfair competition. The patent involved was No. 2,775,549 issued to Shea on December 25, 1956 on a process for making needle coke from petroleum hydrocarbons. The patent was subsequently assigned to the plaintiff. The trade secret alleged was identified by the plaintiff as being the process of the patent.

Since 1953 defendant Continental has been engaged in manufacturing needlecoke, also called premium or No. 1 coke, under contract for the plaintiff at its refinery in Ponca City, Oklahoma. Such high grade coke is required in the manufacture of large graphite electrodes for use in electrical furnaces. It appears that the process used at

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* Of the Third Circuit, sitting by designation.

Ponca City by defendant Continental in making such coke for the plaintiff was that of the patent in suit.

In 1958 defendants Continental and Lake Charles began and thereafter have continued making premium coke at their refinery at Lake Charles, Louisiana, under contract for defendant Union Carbide. It is this operation which is the basis of the plaintiff's complaint, its allegation being that the process used at Lake Charles infringes the Shea patent and by the same token is an unfair use of its trade secret. The defendants assert, on the other hand, that the process under attack is not within the claims of the Shea patent, limited, as the defendants say they must be, by file wrapper estoppel. The defendants assert in the alternative that if the Shea patent is construed so broadly as to cover the Lake Charles process it is invalid. For the same reasons the defendants assert that they have not appropriated or used any trade secret of the plaintiff in that process. After a trial on the merits the district court dismissed the complaint. The plaintiff thereupon took the present appeal.

On this appeal the plaintiff urges that the district court erred in numerous findings of fact, in its conclusions as to the limitation of the claims of the patent under the doctrine of file wrapper estoppel, and as to the invalidity of the patent if not so limited, and in its conclusion that the defendants had not appropriated or used a trade secret of the plaintiff. Our study of the case has satisfied us that there is no merit in any of these contentions. We think that the findings of fact of the district court are amply supported by the evidence. Certainly none of them is clearly erroneous. Likewise we find ourselves in complete accord with the district court's legal conclusions for the reasons ably and exhaustively set out in the opinion filed by Judge Hunter, 1963, 219 F. Supp. 468. We are in complete accord with his thorough and scholarly discussion of the questions involved. It fully supports the judgment and we have nothing further to add to it.

One further matter must be considered. In the course of the trial the plaintiff sought the right to inspect certain documents from the file of a patent attorney employed by defendant Continental. Defendant Continental claimed that the documents were privileged communications with its counsel but, nonetheless, submitted them to the district court for its inspection and ruling. The court ruled that some of the documents were privileged and that some were not. The latter were than furnished to the plaintiff but the former were impounded by the district court and were transmitted, sealed, to this court with the record on appeal.

After the appeal was taken the plaintiff moved this court for the right to inspect the impounded documents. At the hearing of the motion this court deferred its further consideration until the hearing of the appeal on the merits. *Great Lakes Carbon Corp.* v. *Continental Oil Co.*, 1964, 332 F. 2d 588. We have now given further consideration to the motion and have examined the impounded documents. We are satisfied that the district court did not err in holding them to be privileged against inspection by the plaintiff.

The motion for inspection is denied and the judgment of the district court is affirmed.

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No. 20923

Before MARIS,* RIVES and BROWN, *Circuit Judges.*

**Judgment**

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the motion for inspection is

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* Of the Third Circuit, sitting by designation.

denied and the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Great Lakes Carbon Corporation, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 17, 1965

Issued as Mandate: June 23, 1965

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**Petition for Rehearing By Appellant, Great Lakes Carbon Corporation**

Flied May 27, 1965

Comes now Great Lakes Carbon Corporation, Plaintiff-Appellant in the above entitled cause, and petitions for rehearing on the *per curiam* decision of this Court on May 17th, 1965 on the following ground:

The *per curiam* decision has not decided an important question of law as to the privileged documents of Roy C. Hackley, Jr., an attorney for Continental Oil Company, one of the Defendant-Appellees herein.

The question not decided by the Court is:

> Where an attorney makes and files a false oath in the Patent Office to bolster his client's position in litigation, does his conduct cause the privilege protecting his documents to take flight?

At the oral hearing of this appeal on January 4, 1965, His Honor, Judge Brown, stated from the bench that in his opinion Hackley, having filed a false oath in the Patent Office, "tarred himself," so that, "If there ever was a case in which a party is entitled to inspect privileged documents, this is it."

The *per curiam* decision does not touch upon the question of evidence as to when privilege takes flight. It states only that the impounded documents are privileged.

Our position was, and is, that the record shows that Hackley committed a fraud by making and filing a false oath, and that therefore, the privilege takes flight, under the rule of *Clark* v. *United States,* 289 U.S. 1, 15, 77 L. Ed. 993, 1000.

Plaintiff-Appellant is entitled to a ruling by this Court on this question of evidence. It was not ruled upon by the District Court during the discovery proceedings or at the trial, and, so far, has not been ruled upon by this Court. If Judge Brown's statement at the hearing is correct, then it is obvious that very important evidence on many of the issues involved has not been considered, either by the Trial Court or by this Court, in deciding those issues.

While this Petition is brought on one ground only, it should not be construed as admitting the correctness of the *per curiam* decision as to other grounds. It is respectfully requested that this Petition be granted so that Appellant can see the impounded documents and then take such further action as may be appropriate.

Respectfully submitted,

EARL BABCOCK
*Attorney for Appellant*

*Of Counsel:*

WAYNE L. BENEDICT
S. W. PLAUCHE, JR.
RICHARD MCAVOY
CARL F. PETERS

(June 9, 1965)

**On Petition for Rehearing**

Before MARIS,* RIVES and BROWN, *Circuit Judges.*

PER CURIAM:

The petition for rehearing filed by the appellant in this cause is hereby

DENIED.

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**Clerk's Certificate**

UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

I, Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages numbered from 3353 to 3382 contain a full, true and complete copy of the following papers: Motion under Rule 21 & Under Rule 75(j) FRCP for an Immediate Order Granting Counsel for Appellant the Right to Inspect Certain Documents Now under Seal & Identified as Plaintiff's Exhibit No. 208, Order for Hearing on Motion under Rule 21 & Rule 75(j), Argument & Submission (1-7-64), Opinion-Order Denying Motion for Intermediate Order, Argument & Submission (1-4-65), Opinion of the Court, Judgment, Petition for Rehearing and Order Denying Rehearing,

in a certain cause in said Court numbered 20925 wherein Great Lakes Carbon Corporation, is appellant and Continental Oil Company, Et Al are appellees,

as full, true and complete as the originals of the same now remain in my office.

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* Of the Third Circuit, sitting by designation.

I further certify that the pages of the printed record is the printed record* upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this 20th day of July, A. D., 1965.

EDWARD W. WADSWORTH
*Clerk of the United States Court of Appeals for the Fifth Circuit.*

By CLARA R. JAMES
*Chief Deputy Clerk*

(* Volumes I thru XI)